BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JUDY L. WOODMAN Claimant	}
VS.)) Dookst No. 192 001
CESSNA AIRCRAFT COMPANY) Docket No. 183,001
Respondent AND	
CIGNA Inquirence Carrier	
Insurance Carrier AND	
WORKERS COMPENSATION FUND	}

ORDER

The Workers Compensation Fund requests review of the Award of Administrative Law Judge John D. Clark entered in this proceeding on June 14, 1995. The Appeals Board heard oral argument on October 4, 1995.

APPEARANCES

The respondent and insurance carrier appeared by their attorney, Michael D. Streit of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, Steven L. Foulston of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board reviewed the record and adopted the stipulations listed in the Award.

Issues

The only issue before the Administrative Law Judge was that of the liability of the Workers Compensation Fund (Fund). The Judge found the Fund responsible for the entirety of the Award. The Fund requested the Appeals Board to review that finding. That is the only issue before us for review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Workers Compensation Fund is without liability in this proceeding. The finding of the Administrative Law Judge to the contrary should be reversed.

Claimant began working for the respondent in August 1974. Claimant worked on the assembly line and used a rivet gun. In 1985 or 1986 claimant noticed symptoms in her right elbow. Approximately one year later claimant noticed symptoms in her left elbow. Later, claimant's wrists and shoulders began to hurt. Claimant filed this proceeding for workers compensation benefits for bilateral upper extremity and shoulder injuries and settled her claim with the respondent. The respondent admits claimant sustained personal injury by accident arising out of and in the course of her employment by reason of a series of micro-traumas occurring between January and October 1991. As indicated above, the only issue for review is the liability of the Workers Compensation Fund.

It is well settled that the respondent must prove it either hired or retained claimant in its employment with knowledge that claimant possessed an impairment of such magnitude that it constituted a handicap. The Workers Compensation Act defines "handicap" as an impairment of such character that it impairs one's ability to obtain or retain employment. See K.S.A. 1991 Supp. 44-566 and 44-567.

Before 1991, claimant had visited respondent's medical department on only two occasions for upper extremity complaints. Claimant first saw the medical department in December 1987 with complaints of pain in her right forearm and was given an elbow splint. The first aid records do not indicate, and the company nurse does not know, whether claimant wore the splint or, if so, for how long. Three (3) years later, in November 1990, claimant returned to the medical department with complaints of right wrist pain and was given a wrist support. Again, the medical records do not indicate and the company nurse does not know whether claimant wore it. Claimant returned to the medical department in March 1991 with complaints of aching in both forearms. Shortly thereafter, claimant saw the company physician who diagnosed bilateral tendinitis. Subsequently, claimant's symptoms worsened until she finally left work in October 1991.

The Appeals Board finds claimant sustained a compensable, work-related injury to her upper extremities and shoulders between January and October 1991. Further, before that period of accident, respondent lacked knowledge that claimant had an impairment of such magnitude or character that it constituted a handicap in her obtaining or retaining employment. Before that period, claimant had no medical restrictions or limitations placed upon her work activities and had sought treatment at respondent's medical department on only two occasions for what would appear to be relatively minor complaints.

Although respondent is not required to prove mental reservation, mere knowledge of minor symptomatology or a prior injury is not sufficient, in and of itself, to establish that an individual possesses an impairment of such character or magnitude as to constitute a handicap in obtaining or retaining employment. See <u>Johnson v. Kansas Neurological Institute</u>, 240 Kan. 123, 722 P.2d 912 (1986) and <u>Carter v. Kansas Gas & Electric Co.</u>, 5 Kan. App. 2d 602, 621 P.2d 448 (1980). Before <u>liability can be shifted to the Workers Compensation Fund</u>, respondent is required to show that the claimant had an impairment rising to the level of a handicap and that the respondent knew about it. Because that was not done, the Workers Compensation Fund has no liability in this proceeding.

IT IS SO ORDERED.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark entered in this proceeding on June 14, 1995, should be, and hereby is, reversed; that the Workers Compensation Fund has no liability in this proceeding; that the administrative costs itemized in the Award should be, and hereby are, assessed against the respondent and the insurance carrier.

Dated this day of	October, 1995.
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

c: Michael D. Streit, Wichita, Kansas Steven L Foulston, Wichita, Kansas John D. Clark, Administrative Law Judge Philip S. Harness, Director